



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1992

Ms. Sue Brooks Littlefield
Strasburger & Price
2600 One American Center
600 Congress Avenue
Austin, Texas 78701-3288

OR92-398

Dear Ms. Littlefield:

As counsel for the City of Rollingwood you enquire whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 16131.

The City has received a request for disclosure of the personnel file of Rollingwood police officer David Davila. The City claims that this file is excepted from public disclosure by Open Records Act sections 3(a)(2) and 3(a)(3).

Section 3(a)(3) excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

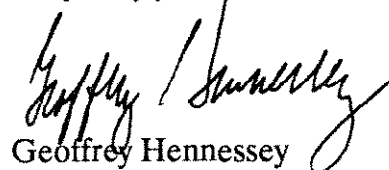
For information to be excepted from public disclosure by section 3(a)(3), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You have submitted for our review the personnel file of David Davila. You represent, and the file shows, that Mr. Davila has been charged in Texas court with tampering with a government record. The charged offense is a third degree felony. The charge is pending.

The Public Integrity Division of the Travis County District Attorney's Office has advised this office that the records in question relate to possible criminal litigation and that the information should be withheld from public inspection at this time. We conclude that the personnel file relates to the pending charges against Mr. Davila, and thus the requested information is excepted pursuant to Open Records Act section 3(a)(3). Please note that this ruling applies only for the duration of the unresolved criminal matter and to the documents at issue here. As we resolve this matter on the basis of section 3(a)(3) we do not address your claim that this information is also excepted by section 3(a)(2).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-398.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 16131
ID# 16289

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